

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25
SUBREGION 33

ALLIED BLENDING & INGREDIENTS, INC.¹

Employer

and

Case 25-RC-155188

BAKERY, CONFECTIONERY, TOBACCO
WORKERS AND GRAIN MILLERS
INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing to determine an appropriate unit for collective bargaining was held on July 10, 2015, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, and the parties orally argued their respective positions prior to the close of the hearing.²

¹ The Employer's correct name appears as stipulated at the hearing.

² Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

After the close of the hearing the Employer filed a Motion to Amend the Transcript to correct asserted errors. The Union opposed the Motion. I find it unnecessary to rule upon this Motion since those changes proposed by the Employer are inconsequential and the correct meaning of what was said is readily apparent from context of the transcript. Further, none of the changes proposed impact in any substantive way the testimony or this Decision.

I. ISSUES

The Petitioner seeks to represent a unit comprised of full-time and regular part-time production and sanitation employees employed by the Employer at its 121 Royal Road, 222 Royal Road, and 210 Carbide Lane, Keokuk, Iowa facilities, where the Employer manufactures food ingredients.³ The Petitioner contends that six employees classified as assistant supervisors are statutory supervisors as defined by Section 2(11) of the Act and should not be eligible to vote. Pursuant to Section 102.63(b)(1) of the Board's Rules and Regulations, prior to the hearing in this matter, the Employer submitted a Statement of Position. The Employer contends that the only appropriate unit must also include all full-time and regular part-time maintenance employees and warehouse operators employed by the Employer at its 121 Royal Road, 222 Royal Road, and 210 Carbide Lane, Keokuk, Iowa facilities since the maintenance employees and warehouse operators share an overwhelming community of interest with employees in the petitioned-for unit. Additionally, the Employer disputes that the Assistant Supervisors are supervisors as defined by Section 2(11) of the Act and therefore should be eligible to vote. The Employer also contends that the Board's rules regarding representation cases which became effective April 14, 2015 are unconstitutional. The Employer further contends that the petition should be dismissed because it fails to identify the local union petitioning for the election. Additionally, the Employer raised at the conclusion of the hearing that, to the extent the Board schedules the election for a time when employees may be on vacation, the Board should allow those employees to vote by absentee ballots.⁴

II. DECISION

As described below, based on the record and relevant Board cases, including the Board's decision in *Specialty Healthcare and Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), enfd. 727 F.3d 552 (6th Cir. 2013), I find that the petitioned-for unit limited to the Employer's full-time and regular part-time production and sanitation employees employed by the Employer at its 121 Royal Road, 222 Royal Road, and 210 Carbide Lane, Keokuk, Iowa facilities is not appropriate, and that the appropriate unit must also include all full-time and regular part-time

³ Initially, the Petitioner filed a representation petition seeking an election within a unit comprised of all full-time and regular part-time production and sanitation employed at the Employer's 121 Royal Road, Keokuk, Iowa location. At the start of the hearing, the Petitioner submitted an amended petition, with approval, seeking an election within a unit comprised of all full-time and regular part-time production and sanitation employees employed by the Employer at its 121 Royal Road and 210 Carbide Lane, Keokuk, Iowa facilities. Prior to the conclusion of the hearing, the Petitioner further revised its position to include any production and sanitation employees located at 222 Royal Road, Keokuk, Iowa as well.

⁴ The Board does not provide absentee ballots. *NLRB v. Cedar Tree Press, Inc.*, 169 F.3d 794 (3d Cir. 1999); *KRCA-TV*, 271 NLRB 1288 (1984); *Wilson & Co.*, 37 NLRB 944 (1941). Specifically, ballots for voting by mail should not be provided to, inter alia, those who are in the Armed Forces, ill at home or in a hospital, on vacation, or on leave of absence due to their own decision or condition.

production employees, sanitation employees, maintenance employees and warehouse operators employed by the Employer at its 121 Royal Road, 222 Royal Road, and 210 Carbide Lane, Keokuk, Iowa facilities, as contended by the Employer. Thus, the following constitutes a unit appropriate for purposes of collective bargaining:

All full-time and regular part-time production employees, sanitation employees, maintenance employees and warehouse operators employed by the Employer at its 121 Royal Road, 222 Royal Road, and 210 Carbide Lane, Keokuk, Iowa facilities; BUT EXCLUDING all other employees, including temporary employees, shuttle drivers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The unit found appropriate herein consists of approximately 46-52 employees for whom no history of collective bargaining exists.

I declined to allow the parties to litigate the issue of whether the six assistant supervisors working in production and sanitation should be eligible to vote. Because this dispute concerns the eligibility of just six individuals in a unit of potentially 52 employees, I concluded that the dispute is not relevant to whether there is a question concerning representation and deals only with eligibility issues which are unnecessary to resolve prior to conducting an election. Therefore consistent with Section 102.64 of the Board's Rules and Regulations, I shall direct an election in this matter, and I further order that the assistant supervisors may vote in the election, but their ballots shall be challenged since their eligibility has not been resolved. The eligibility or inclusion of these individuals will be resolved, if necessary, following an election

Moreover, I declined to allow the legality of the Board's rule regarding representation cases to be litigated inasmuch as the Board adopted the final rule changes, and this issue is not relevant to determining whether a question concerning representation exists. I further find that the petition should not be dismissed because it fails to identify the local union petitioning for the election. Failure to identify a local union in a representation petition does not make the petition somehow defective. Additionally, the parties stipulated at hearing that the International Union was a labor organization under the Act.

III. STATEMENT OF FACTS

A. The Employer's Operations

The Employer is a corporation which operates four separate facilities located in Keokuk, Iowa. These facilities are all located within a thousand yards of each other. The main building is located at 121 Royal Road. Another facility called the warehouse is located at 222 Royal Road. This facility is located about 150 yards from the main building. There are also two buildings located at 210 Carbide Lane, which are about 1000 yards from the main building. One of the buildings has the 210 Carbide Lane address and the other is a small building which houses a grinder which may be operated by a production employee, referred to as Line C.

These facilities operate together to manufacture food ingredients including powdered anti-cakes, bakery additives, tortilla pre-mixes, dusting starches, and liquid preservatives. With respect to dry products, they are weighed and placed into a blender where they are blended and sifted. After the products are blended and sifted, they are packaged. Liquid products are pumped into tanks, blended, and packaged into drums.

The Employer employs approximately 50 individuals at the facilities who work in several different departments: Production Department, Sanitation Department, Maintenance Department, and Warehouse Department. This includes full-time and regular part-time employees as well as supervisors and managers. The Plant Manager has overall responsibility for the facilities and departments. The Production Supervisors have overall responsibility for the Production Department. The Sanitation Supervisors have overall responsibility for the Sanitation Department. The Maintenance Supervisors have overall responsibility for the Maintenance Department. The Warehouse Supervisors have overall responsibility for the Warehouse Department. The Department Supervisors report to the Plant Manager. Production employees report to Production Supervisors.⁵ Sanitation employees report to Sanitation Supervisors. Maintenance employees report to Maintenance Supervisors. Warehouse operators report to Warehouse Supervisors. Employee shifts vary by department as described below.

All employees receive the same health care benefits, life insurance, 401(k) plan, educational assistance benefits and are subject to the same employment policies and work rules. All employees wear the same uniforms with the exception of the maintenance employees. They wear darker blue uniforms which are fire-resistant. All hourly employees are paid pursuant to a pay scale that ranges from Level 1 to Level 6.

B. Production Employees

The Employer employs approximately 35-40 production employees whose job classifications include packer operators, setup operators, blender operators, general laborers and assistant supervisor. Most production employees are assigned to work at the facilities located at 121 Royal Road and 210 Carbide Lane. However, production employees also perform work at the facility located at 222 Royal Road. Production employees are responsible for combining ingredients together to make products and operating machines used to blend and sift products. Most production employees working at 121 Royal Road work on Shifts A, B, C, or D. Shift A runs from 6:00 A.M. to 6:00 P.M. Shift B runs from 6:00 P.M. to 6:00 A.M. Shift C runs from 6:00 A.M. to 6:00 P.M. Shift D from 6:00 P.M. to 6:00 A.M. Shifts A and B work on the same days. Shifts C and D work the other days. Shifts A through D work on a two-days on, two-days off, three-days on, three-days off rotation which covers the Employer's operations on a 7 day, 24 hour basis. One of these production employees works on first shift from 7:00 A.M. to 3:30 P.M.

Two production employee crews who are assigned to the facility located at 210 Carbide Lane generally work from 5:00 A.M. to 3:30 P.M., but can work 12 hour shifts if necessary

⁵ One production employee who works at the 210 Carbide Lane facility and performs restocking and labeling of bags reports to the Warehouse Supervisor.

based on the product. Additionally one production employee at this location works 7:00 A.M. to 3:30 P.M. and one typically works from 4:00 A.M. to 12:30 P.M.

Production employees are not required to possess any special skills, education, licensing, or training. Production employees' pay ranges from Level 1 to 5. Their starting pay is at Level 1 which is \$10 per hour and earn up to \$16 or \$17 per hour.

C. Sanitation Employees

The Employer employs approximately five sanitation employees whose job classifications include general laborers and assistant supervisor. Most sanitation employees are assigned to work at the facility located at 121 Royal Road. However, sanitation employees also perform work at the facilities located at 222 Royal Road and 210 Carbide Lane. Sanitation employees are responsible for sweeping, mopping and scrubbing floors, cleaning equipment, and dry cleaning. One sanitation employee works in the Baler Room at the facility located at 121 Royal Road baling waste. Sanitation employees work normally from 6:00 A.M. to 2:30 P.M. One sanitation employee may work from 4:00 A.M. to 12:30 P.M. or 6:00 A.M. to 2:30 P.M. Another sanitation employee may work from 2:00 A.M. to 10:30 A.M. cleaning offices throughout the Employer's facilities. Sanitation employees generally work Monday through Friday, however one sanitation employee each week will work Saturday and Sunday in lieu of Friday and Monday. Therefore, at least one sanitation employee is present 7 days a week.

Sanitation employees are not required to possess any special skills, education, licensing, or training. Sanitation employees' pay ranges from Level 1 to 5. The starting pay is at Level 1 which is \$10 per hour and they earn up to \$13.

D. Maintenance Employees

The Employer employs approximately three maintenance employees. Most maintenance employees are assigned to work at the facility located at 121 Royal Road. However, maintenance employees also perform work at the facilities located at 222 Royal Road and 210 Carbide Lane. Maintenance employees are responsible for repairing and performing preventive maintenance on machines. Two maintenance employees work from 7:00 A.M. to 3:30 P.M. One maintenance employee works from 3:15 P.M. to 11:45 P.M., Monday through Friday. The maintenance employees also have an on-call schedule with one employee being on-call at all times for necessary maintenance

The record does not reflect the skills and qualifications of maintenance employees. However, maintenance employees' pay starts at Level 5 which is \$13 per hour and they earn up to \$16 or \$17 per hour.

E. Warehouse Operators

The Employer employs approximately four warehouse operators. Warehouse operators are assigned to work at the facilities located at 222 Royal Road and 210 Carbide Lane. However, warehouse operators also perform work at the facility located at 121 Royal Road.

Warehouse operators are responsible for stacking pallets, loading and unloading product, and transferring product to and from various locations for production. They work from 7:00 A.M. to 3:30 P.M., Monday through Friday.

They are required to possess forklift operating ability. Warehouse employees' pay starts at Level 5. Warehouse employees' starting pay is \$13 per hour and they earn up to \$17 or \$18 per hour.

IV. BOARD LAW

The Act does not require a petitioner to seek representation of employees in the most appropriate unit possible, but only in an appropriate unit. *Overnite Transportation Co.*, 322 NLRB 723 (1996). Thus, the Board first determines whether the unit proposed by a petitioner is appropriate. When the Board determines that the unit sought by a petitioner is readily identifiable and employees in that unit share a community of interest, the Board will find the petitioned-for unit to be an appropriate unit, despite a contention that the unit employees could be placed in a larger unit which would also be appropriate or even more appropriate, unless the party so contending demonstrates that employees in the larger unit share an "overwhelming community of interest" with those in the petitioned-for unit. *Specialty Healthcare*, supra, slip op. at 7.

Thus, the first inquiry is whether the job classifications sought by Petitioner are readily identifiable as a group and share a community of interest. In this regard, the Board has made clear that it will not approve fractured units; that is combinations of employees that have no rational basis. *Odwalla, Inc.*, 357 NLRB No. 132 (2011); *Seaboard Marine*, 327 NLRB 556 (1999). In making this determination, the Board considers whether the employees sought are organized into a separate department; have distinct skills and training; have distinct job functions and perform distinct work, including inquiry into the amount and type of job overlap between classifications; are functionally integrated with the Employer's other employees; have frequent contact with other employees; interchange with other employees; have distinct terms and conditions of employment; and are separately supervised. *United Operations, Inc.*, 338 NLRB 123 (2002), see also *Specialty Healthcare*, supra, at 9. Particularly important in considering whether the unit sought is appropriate are the organization of the plant and the utilization of skills. *Gustave Fisher, Inc.*, 256 NLRB 1069, fn. 5 (1981). However, all relevant factors must be weighed in determining community of interest.

With regard to the second inquiry, additional employees share an overwhelming community of interest with the petitioned-for employees only when there "is no legitimate basis upon which to exclude (the) employees from" the larger unit because the traditional community-of-interest factors "overlap almost completely." *Specialty Healthcare*, supra, at 11-13, and fn. 28 (quoting *Blue Man Vegas, LLC. v. NLRB*, 529 F.3d 417, 421-422 (D.C. Cir. 2008)). Moreover, the burden of demonstrating the existence of an overwhelming community of interest is on the party asserting it. *Northrop Grumman Shipbuilding, Inc.*, 357 NLRB No. 163, slip. op. at 3, fn. 8 (2011).

V. DISCUSSION AND APPLICATION OF BOARD LAW

First, the unit sought by Petitioner is a fractured unit and the Employer has demonstrated that there is no rational basis for excluding the maintenance employees and warehouse operators from the unit, while including the classifications sought by Petitioner in the unit. *Seaboard Marine*, 327 NLRB 556 (1999), quoted in *Specialty Healthcare*, supra at 13. In the language of the District of Columbia Circuit in *Blue Man Vegas LLC v. NLRB*, supra at 421, there is “no legitimate basis upon which to exclude” the maintenance employees and warehouse operators while at the same time including all the other classifications sought by Petitioner. Thus, the maintenance employees and warehouse operators share a community of interest with the employees in the petitioned-for unit and form an appropriate unit.

With regard to my conclusion that the unit sought by Petitioner is a fractured unit, I find that the unit sought by Petitioner does not track any administrative lines drawn by the Employer, such as classification, department or function. In this regard, it is not a classification-based unit because Petitioner seeks classifications which work across several of the Employer’s departments, i.e. production employees and sanitation employees. Nor is the unit sought by Petitioner drawn along departmental lines. Rather, Petitioner seeks employees in two separate departments, while seeking to exclude employees in other departments. Finally, the classifications sought by Petitioner are not drawn along functional lines, as the production employees and sanitation employees regularly interact with the maintenance employees and warehouse operators and perform similar job functions. The record shows that production employees and maintenance employees work together to repair machines. Production employees also work together with warehouse operators to load and unload materials and products. Sanitation employees and maintenance employees work together to clean machines and equipment. Production employees and sanitation employees work together to perform large clean-up jobs.

Nor is the unit sought by Petitioner structured along lines of supervision. In this regard, Petitioner seeks to represent production employees and sanitation employees. Yet, Production Supervisors supervise production employees. Sanitation Supervisors supervise sanitation employees. Indeed, a Warehouse Supervisor supervises one production employee. Thus, the production employees and the sanitation employees do not share common supervision.

All hourly employees are paid pursuant to a pay scale that ranges from Level 1 to Level 6. The starting pay of production employees and sanitation employees is \$10 per hour as compared to the \$13 per hour received by starting maintenance employees and warehouse operators. Production employees, maintenance employees and warehouse operators have similar top wage rates at \$16 to \$18 per hour. All employees receive the same health care benefits, life insurance, 401(k) plan, educational assistance benefits and are subject to the same employment policies and work rules. All employees wear the same uniforms with the exception of the maintenance employees, who wear darker blue uniforms which are fire-resistant.

The Petitioner argues that the unit sought consists of a readily identifiable group. However, the Petitioner’s argument fails when excluding the maintenance employees and warehouse operators. In the instant case, production employees and sanitation employees are not required to possess any special skills, education, licensing, or training. The record does not

reflect whether maintenance employees are required to possess any special skills, education, licensing, or training. Warehouse operators are required to have forklift operating ability. Even though production employees, sanitation employees, and maintenance employees are not required to possess any special skills, education, licensing, or training, a large majority of the Employer's employees possess forklift licenses. With the exception of one warehouse operator, all of the warehouse operators began their employment as production employees.

For the reasons discussed above, I conclude that the Employer has carried its burden of proving that the maintenance employees and warehouse operators share an overwhelming community of interest with the employees in the petitioned-for unit because none of the traditional bases for drawing unit boundaries used by the Board supports excluding these classifications while including the remaining employees.

The Petitioner stated, at hearing, it was willing to proceed to an election in a larger unit if that unit was found to be appropriate. Pursuant to Section 11031.1(c) of the National Labor Relations Board Casehandling Manual, Part Two, Representation Proceedings, I have reviewed the Petitioner's showing of interest already on file and have determined that it is sufficient for the enlarged unit in which I have directed an election.

VI. CONCLUSION

In view of the foregoing and the record as a whole, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production employees, sanitation employees, maintenance employees and warehouse operators employed by the Employer at its 121 Royal Road, 222 Royal Road, and 210 Carbide Lane, Keokuk, Iowa facilities; BUT EXCLUDING all other employees, including temporary employees, shuttle drivers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

OTHERS PERMITTED TO VOTE: At this time, no decision has been made regarding whether Assistant Supervisors are included in, or excluded from, the bargaining unit, and these individuals may vote in the election, but their ballots shall be challenged since their eligibility has not been resolved. The eligibility of these individuals will be resolved, if necessary, following the election.

VII. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by BAKERY, CONFECTIONERY, TOBACCO WORKERS AND GRAIN MILLERS INTERNATIONAL UNION, AFL-CIO, CLC.

A. Election Details

The election will be held on July 28 and 29, 2015 from 3:00 P.M. (CDT) to 7:00 P.M. (CDT) at the accounting office/conference room of the Employer at 121 Royal Road, Keokuk, Iowa.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending Saturday, July 18, 2015, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Also eligible to vote using the Board's challenged ballot procedure are those individuals employed in the classifications whose eligibility remains unresolved as specified above and in the Notice of Election.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters. The Employer must also include in a separate section of that list the same information for those individuals who, according to this direction of election, will be permitted to vote subject to challenge.

To be timely filed and served, the list must be *received* by the regional director and the parties by July 23, 2015. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the

list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

VIII. RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: July 21, 2015



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